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U.S. Citizenship
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Services

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BS

FILE: [REDACTED]
EAC 03 092 51944

Office: VERMONT SERVICE CENTER

Date: AUG 12 2005

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

We note that the record contains submissions from various attorneys at the law firm of Zhang & Associates. The term "counsel" shall apply, here, to each of these attorneys as appropriate.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time he filed the petition, the petitioner was a polymer chemist at Triton Systems, Inc. (TSI). The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now Citizenship and Immigration Services (CIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the

“prospective national benefit” [required of aliens seeking to qualify as “exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien’s past record justifies projections of future benefit to the national interest. The petitioner’s subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term “prospective” is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Counsel states that the petitioner’s “research is focused on the synthesis, characterization and processing of novel advanced polymers to be integrated into NASA programs.” The petitioner submits several witness letters discussing the petitioner’s work in detail. Of the 13 original witnesses, five are on the faculties of universities where the petitioner studied, six work (or did work) at companies that have employed the petitioner, and the remaining two have collaborated with the petitioner. Thus, the composition of the group of witnesses is not *prima facie* evidence that the petitioner’s work has attracted attention or otherwise had influence beyond his own supervisors and collaborators. We shall discuss examples of these letters here.

Professor Samuel P. Sawan supervised the petitioner’s doctoral studies at the University of Massachusetts, Lowell. Prof. Sawan describes the petitioner’s work at the university:

[The petitioner’s] thesis research was entitled “Biomimetic Surfaces: Generating Biological Like Surfaces Using Dense Gas Technology.” This project addresses a number of interesting applications including the creation of better biocompatible materials for medical devices and technology using environmentally responsible approaches. The approach taken and the results obtained were new, inventive and novel and can have a significant impact on medical device technology. . . . His research addressed means of preparing surfaces that . . . would be present in the body and appear normal to the body’s immune system. . . . The consequences of surface modification strategies using environmentally safe approaches have broad appeal to a number of industries outside of the medical community. Therefore the results of his research have broad technical appeal to a wide audience.

Professor Edwin G.E. Jahngen of the University of Massachusetts, Lowell, states that the petitioner “has pioneered several areas of work ranging from new analytical methods to the discovery of novel compounds. The most novel and significant area in my opinion is his new foray into the use of biomolecules to render surfaces of externally communicating medical devices antimicrobial. [REDACTED] sits on the board of directors of TSI, the petitioner’s current employer. There is no indication in the record that the petitioner continues to work on materials used in medical equipment, and the record contains no independent documentation to show the extent to which manufacturers of medical equipment use materials that the petitioner developed in the past.

[REDACTED] president and chief operating officer at TSI, states:

TSI's mission is the development of technology for new materials, processing and applications in aerospace, military, medical, electronic, consumer, and industrial markets. . . .

I . . . have worked closely with [the petitioner] on projects involving the synthesis and processing of new high performance polymers. [The petitioner] and I have worked with other professionals at TSI to successfully complete new and highly specialized experimental procedures which we believe will result in new materials and processing for applications such as flexible plastic display screens, flexible low cost polymeric transistors, high density inexpensive memories for computers, lightweight rapid repair for composite materials, and small scale fluid handling systems. . . .

[The petitioner] has proven himself to be a key contributor to our technology development projects. . . .

[The petitioner] has proven himself to be an outstanding achiever in our group of talented professionals. Working independently, he identified polymers that can be processed in thickness over 10 times greater than previously achieved, using low cost materials that solve structural problems for repairing high performance aircraft components. . . .

Since [the petitioner] is a key contributor on efforts such as this, our ability to deliver successful results to meet these important objectives may be reduced if he needs to leave our service for an extended period of time.

[REDACTED] an associate professor at the University of Central Florida, states:

I have known [the petitioner] for over one year, working closely with him on an important research project sponsored by the U.S. Air Force. . . .

[The petitioner] has been directing the technical effort as Principle [sic] Investigator on a NASA program entitled "Advanced Clear Space Durable Polymer for Ultra-Lightweight Structures and Optics." In this program, he has developed a novel synthetic route to produce a colorless space durable polymer, TOR-NC. He has optimized the polymerization reaction of TOR-NC to consistently produce high molecular weight, low polydispersity polymer with good materials characteristics (optical and mechanical). [The petitioner] has also been working on a U.S. Air Force SBIR program that developed new resin systems and novel polymerization approaches for curing thick composite structures using two-photon technology. We are currently optimizing the formulations for various resin systems to achieve more efficient polymerization that will allow the curing of even thicker structures. Through this on-going research, this technique will be potentially developed into a non-autoclave repair process for aircraft.

[REDACTED] senior polymer scientist at NASA Langley Research Center, states:

[The petitioner's] contributions to this program have been creative, innovative and extremely valuable to its overall success. He is responsible for the synthesis, characterization and

processing of a novel phosphine oxide containing polyimide that has a unique combination of properties that are important to NASA for future advanced spacecraft, particularly large ultra lightweight deployable spacecraft also referred to as Gossamer spacecraft. This unique combination of properties includes atomic oxygen resistance, ultraviolet radiation resistance, high optical transmission, low solar absorptivity and flexibility. This development represents a significant advancement over the state-of-the-art and is the first time that such a material has been prepared.

[The petitioner's] contributions to this program include the development of a novel synthetic route to produce a colorless, space durable polyimide and optimization of the polymerization process. The innovative technique provides a path to consistently produce high molecular weight polymer with very good yield and is easily scalable. He further developed and optimized a method to produce thin film with excellent optical and mechanical properties.

Beyond the witness letters, the petitioner submits documentation showing that one of his presentations was accepted for publication in the proceedings of that conference.

The director denied the petition on December 28, 2004. The director acknowledged the intrinsic merit and national scope of the petitioner's work, and stated that the petitioner "has made numerous original contributions that have advanced the field of polymer science." On balance, however, the director concluded that the initial submission showed only that the petitioner "has been a valuable resource to his employer."

On appeal, counsel asserts that the petitioner has accumulated a record of accomplishments that is sufficient to meet the threshold set forth in *Matter of New York State Dept. of Transportation*. Counsel states, for instance, that the petitioner "developed a novel approach for biomaterials with surfaces that mimic natural body tissues, thus not triggering the body's immune reaction." The record, however, is devoid of evidence to show how widely, if at all, these materials are actually being used in medicine, or that plans are underway to manufacture and use the materials. The development of these materials is not, by itself, significant unless the materials are actually put to use, and the use thereof actually alleviates the problems that the materials were intended to address. The burden is on the petitioner to establish that these materials are, in fact, being used, or that entities in a position to manufacture and distribute the materials are implementing plans to do so.

The petitioner submits three new letters on appeal. [REDACTED] program manager of the Polymer Chemistry Program at the Air Force Office of Scientific Research, states:

[The petitioner] has made research contributions that are important to the Department of Defense. Through the years of 2001 and 2002, he participated in two projects at Triton Systems, Inc. that were supported by this office. One was on Space Ready Polymer to develop polymers that are resistant to atomic oxygen attack at Low Earth Orbit. The other project was on High Temperature Matrix Composites for structural applications in high temperature environments. I met [the petitioner] during the contract periods of these two projects, synthesizing and characterizing new polymer structures that are targeted to address the two technical goals. . . . His contributions were instrumental to the successful completion of these two material research projects.

[REDACTED] now a senior project engineer at [REDACTED] was formerly a project scientist at TSI. He states:

I am familiar with much of the work that [the petitioner] performed at Triton and his work before and since his employment at Triton.

Through the results of his work, [the petitioner] demonstrated expertise in a number of areas of significance to the national interest including space-durable polymers and two-photon absorbing materials and resins. . . .

[The petitioner significantly improved the curing depth and curing time of two-photon based systems during his work at Triton. In addition, their high sensitivity may make them key enabling technologies in optical computing for optical data storage and in the fabrication of optical filters and band gap devices.

We recall, here, [redacted] comment that "Since [the petitioner] is a key contributor on efforts such as this, our ability to deliver successful results to meet these important objectives may be reduced if he needs to leave our service for an extended period of time." As shown by [redacted] reference to the petitioner's "work . . . since his employment at Triton," the petitioner has left TSI, apparently for reasons unrelated to immigration concerns.¹ The petitioner's departure from TSI obviously nullifies the argument that the petitioner's continued employment at TSI is in the national interest.

Dr. Joseph G. Smith, Jr., senior polymer scientist at NASA Langley Research Center, states:

I am not a co-worker, colleague, or collaborator of [the petitioner's]. I became aware of his technical expertise while I was a technical monitor of a NASA SBIR contract entitled "Advanced Clear Space Durable Polymer for Ultra-Lightweight Structures and Optics." This contract was awarded to Triton System[s] Inc. and [the petitioner] was the program manager of this project from January 2002 to May 2002. Thanks to [the petitioner's] contributions in this project, his research efforts resulted in a novel polyimide that exhibited a unique combination of properties that included atomic oxygen and ultraviolet radiation resistance, high optical transmission, low solar absorptivity, and flexibility. These special material properties are of importance to NASA for potential utilization of the polymer on future advanced spacecraft, particular large ultra lightweight deployable spacecraft also referred to as Gossamer spacecraft.

[The petitioner] developed a novel synthetic methodology and optimized the polymerization conditions to prepare this colorless, space durable polyimide. . . . The novel colorless polyimide developed by [the petitioner] is a promising material that I expect will meet future requirements for advanced ultra lightweight deployable spacecraft of interest to DOD and NASA.

[redacted] "it is critically important for the United States to retain talented research scientists like" the petitioner. He does not address the petitioner's departure from TSI or show that the petitioner's subsequent work has involved projects of comparable importance.

¹ The present petition was filed on November 21, 2002. CIS records show that less than eight weeks later, on January 13, 2003, a different company filed an I-129 nonimmigrant petition on the alien's behalf. That petition was approved a short time later.

The record shows that the petitioner is more than competent at his job as a polymer chemist, solving problems and achieving goals for his various employers. While the witnesses clearly hold the petitioner and his work in high regard, their statements amount to a list of the petitioner's activities rather than persuasive evidence that the petitioner has distinguished himself from other polymer chemists. The record does not show that the petitioner's contributions to the field of polymer chemistry, or to the various fields affected by his work, have had (or are likely to have) so significant an impact as to warrant the special benefit of a national interest waiver. The petitioner's brief involvement in a NASA project does not establish that the petitioner serves the national interest to the same extent that NASA, as an institution, does.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.